

Opinion No. 60-20

February 8, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. John M. Phillips Secretary State Racing Commission P.O. Box 1693
Albuquerque, New Mexico

QUESTION

QUESTIONS

1. What distributions must be made of the one-third of the commissions to be added to the purses for each day's races under Sec. 60-6-6, N.M.S.A., 1953 Comp.?
2. Does the "one-third of such commissions" to be added to the purses include one-third of the "odd cents of all redistributions over the next lowest multiple of five" commonly referred to as "breakage"?

CONCLUSIONS

1. The commissions to be added to the purses must be divided equally among all the races occurring or held on any particular day.
2. Yes.

OPINION

{*363} ANALYSIS

The statutory provision pertinent to the questions at hand is set forth in the third paragraph of Sec. 60-6-6, N.M.S.A., 1953 Comp. This paragraph reads as follows:

"Commissions on the proceeds from the sale of such tickets and certificates may be retained by the licensee, but such commissions shall, in no event, and in any enclosure, exceed fifteen per cent /15%/ of the proceeds of such sales and the odd cents of all redistributions over the next lowest multiple of five and that **one-third of such commissions shall be added to and distributed equally to the purses for each day's races.**" (Emphasis supplied.)

Generally speaking, statutes permitting pari mutuel betting are to be strictly construed. 117 A.L.R. 828.

In answer to your first question, I have been unable to find any case law construing the underscored portion of the above-quoted paragraph and with which we are particularly

concerned. Therefore, it becomes a matter of examining the language particularly employed and ascertaining the apparent intent of the legislation arising therefrom.

As we have underscored above, the pertinent language is that reading as follows:

". . . one-third of such commissions shall be added to and distributed **equally** to the purses for each day's races."

In analyzing this language, we can arrive at no other conclusion than that the word "equally" means exactly what it indicates, that is, that one-third of the total commissions from the pari mutuel handle shall be distributed equally to the purses of each race held during the day. In other words, it is our conclusion that the percentage must be computed at the end of the day's races and thereafter divided and distributed equally to the purses for each race.

{*364} The answer to your second question is also furnished by the paragraph quoted above from Sec. 60-6-6, N.M.S.A., 1953 Comp. This paragraph clearly provides that commissions may be retained by the licensee but shall in no event exceed 15% of the proceeds of the sales of pari mutuel tickets plus the odd cents of all redistributions over the next lowest multiple of five. The paragraph further provides that one-third of such commissions shall be added to the day's purses.

It appears impossible to arrive at any other conclusion but that the commissions are inclusive of the odd cents as above described and that one-third of this amount shall be added to the purses. Therefore, our response is in the affirmative, that is, that there shall be included in the purses for the day's races one-third of the "breakage" as well as the 15% described.

I trust this will answer your inquiries on this subject.

By: Thomas O. Olson

Assistant Attorney General